

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TD BANK, N.A.,

Plaintiff.

vs.

VERNON W. HILL, II,

Defendant.

CIVIL ACTION NO.

Complaint

Plaintiff TD Bank, N.A. ("TD Bank"), by and through its undersigned counsel, for its Complaint against Defendant Vernon W. Hill, II ("Hill"), alleges as follows:

NATURE OF ACTION

1. This is an action for willful and intentional copyright infringement under the Copyright Act of 1976, as amended (the "Copyright Act"), 17 U.S.C. §§ 101, *et seq.*

2. TD Bank brings this lawsuit because Hill has willfully copied a 2007 book manuscript in which TD Bank owns the copyright. Hill (together with co-author Bob Andelman) purport to have written the business book, "FANS! Not Customers: How to Create Growth Companies in a No Growth World" (the "2012 Book"), which is being sold online by Amazon.com and Barnesandnoble.com, among other websites, and in physical bookstores. The 2012 Book contains many pages in which large amounts of text are copied verbatim from TD Bank's book manuscript. In several instances, the copying consists of multiple pages lifted verbatim. The willful nature of this copyright infringement is beyond dispute, because Hill has signed a written agreement

acknowledging that TD Bank owns the copyright in the 2007 book manuscript. Further, Hill recently acknowledged TD Bank's ownership of the copyright in the 2007 manuscript, because he is seeking to end such ownership and have the copyright re-assigned to him in his Motion to Enforce pending in Hill, et al. v. TD Bank, N.A., et al., Civil Action No. 1:09-03685 (RBK-JS). Hill's intentional infringement, in a book that has generated publicity in the banking and business community, has caused and continues to cause irreparable harm to TD Bank. Accordingly, TD Bank brings this action to protect its intellectual property, recover its damages due and enjoin Hill's wrongful conduct.

THE PARTIES

3. TD Bank, N.A. is a national banking association organized under the laws of the United States. It has offices in Cherry Hill, New Jersey. TD Bank is the successor by merger to Commerce Bank, N.A.

4. Vernon W. Hill, II is the former Chairman and CEO of Commerce Bancorp, LLC, an affiliate of Commerce Bank, N.A. at the time, and was terminated from his position effective July 31, 2007. Upon information and belief, Hill is currently a resident of the State of New Jersey.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), as TD Bank alleges copyright infringement under the Copyright Act.

6. This Court has personal jurisdiction over Hill pursuant to N.J. Civ. R. 4:4-4(a)(1) because, upon information and belief, Hill resides in Moorestown Township, New Jersey.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2) because Hill resides in this District, the 2012 Book is being sold in physical stores and via the Internet in this District, and/or because a substantial part of the events and conduct giving rise to this action have occurred and/or will occur in this district.

FACTUAL BACKGROUND

TD Bank Owns a Valid Copyright

8. TD Bank, as the successor by merger to Commerce Bank, N.A., owns the copyright in the 2007 book manuscript of “Fans, Not Customers: Creating Super Growth in a No-Growth Industry,” which has also been titled “The Power of WOW” (the “2007 Manuscript”). A copy of the 2007 Manuscript is submitted with this Complaint as Exhibit A.

9. On or around September 19, 2006, Commerce Bank, N.A. entered into a contract with Portfolio, a division of Penguin Group (USA) Inc., for potential publication of the 2007 Manuscript.

10. In connection with such contract, Hill signed an agreement that stated as follows: “I also unconditionally guarantee that the Work [the 2007 manuscript] is a work made for hire within the meaning of the United States Copyright Law and that the Author [Commerce Bank, N.A.] is the owner of copyright in the Work [2007 Manuscript].” A copy of this agreement is submitted with this Complaint as Exhibit B.

11. The 2007 Manuscript is an original work of authorship, protected by U.S. copyright law. TD Bank has submitted the 2007 Manuscript for registration at the U.S. Copyright Office, with a request for expedited processing to facilitate this action. The acknowledgement of receipt of this filing is submitted with this Complaint as Exhibit C.

TD Bank Learns of Hill's Infringement

12. In November 2012, TD Bank learned of the publication of the 2012 Book.

13. The 2012 Book purportedly was written by Hill with Bob Andelman.

14. The 2012 Book is being published and distributed by Profile Books Ltd. It is available for sale on Amazon.com, Barnesandnoble.com, Amazon.co.uk and physical Barnes & Noble stores, among other venues. It is also available for resale on websites, including ebay.com and allbookstores.com.

15. In the 2012 Book, Hill has copied verbatim large and material portions of the copyrighted 2007 Manuscript. A copy of the 2012 Book is attached as Exhibit D. TD Bank has never consented to such actions. Exhibits E through O contain certain examples of this infringement. Each of these exhibits contain a section 1, which is an excerpt from the 2007 Manuscript, and a section 2, which is the corresponding and infringing excerpt from the 2012 Book. These examples are merely illustrative of the infringement alleged in this Complaint and are not an exhaustive compilation of all of the infringement at issue.

16. The foregoing conduct constitutes the unauthorized reproduction, distribution, publication, public display and creation of a derivative work of the 2007 Manuscript. The 2007 Manuscript was never published.

17. Given Hill's statement in the agreement referenced in Paragraph 10, Hill's actions are willful and intentional.

18. Given Hill's recent acknowledgement that TD Bank owns the copyright in the 2007 manuscript, since he is seeking to end such ownership and have the copyright re-assigned to him in his Motion to Enforce pending in Hill, et al. v. TD Bank, N.A. at al., Civil Action No. 1:09-03685 (RBK-JS), Hill's actions are willful and intentional.

FIRST COUNT
Copyright Infringement
(17 U.S.C. § 101, *et seq.*)

19. TD Bank repeats and realleges paragraphs 1 through 18 above by reference as if fully set forth herein.

20. TD Bank owns the copyright to the 2007 Manuscript, which is an original work of authorship and protected by U.S. copyright law. TD Bank has filed for registration of the 2007 Manuscript with the U.S. Copyright Office and has received an acknowledgement of receipt for that filing, which is submitted herewith as Exhibit C.

21. Hill's unauthorized reproduction, distribution, publication, creation of a derivative work and/or public display of the 2012 Book violates TD Bank's exclusive rights in the 2007 Manuscript pursuant to Sections 106(1), (2), (3) and (5) of the Copyright Act, 17 U.S.C. § 106(1), (2), (3) & (5), and therefore constitutes copyright infringement under Section 501 of the Copyright Act, 17 U.S.C. § 501. Such infringement is willful and intentional.

22. Hill's acts of copyright infringement have caused irreparable harm to TD Bank and, unless enjoined, will continue to cause irreparable harm to TD Bank. TD Bank is entitled to injunctive relief under 17 U.S.C. § 502.

23. TD Bank is entitled to impoundment of all copies of the 2012 Book under 17 U.S.C. § 503.

24. TD Bank is entitled to recover all actual damages suffered by TD Bank and any profits wrongfully received by Hill that are attributable to the foregoing actions, pursuant to 17 U.S.C. § 504(b). In the alternative, TD Bank is entitled to an award of statutory damages pursuant to 17 U.S.C. § 504(c), with an enhancement due to Hill's willful infringement.

25. TD Bank is entitled to an award of its full costs and attorneys' fees under 17 U.S.C. § 505, based on Hill's willful infringement and the extraordinary circumstances of this case.

PRAYER FOR RELIEF

WHEREFORE, TD Bank hereby respectfully requests relief as follows:

- A. That judgment be entered in its favor and against Hill;
- B. That Hill and any of his agents be permanently enjoined and restrained from infringing the 2007 Manuscript, via the 2012 Book or otherwise;
- C. That all copies of the 2012 Book be impounded under 17 U.S.C. § 503.
- D. That Hill be ordered to account to TD Bank for all gains and profits obtained as a result of his infringement, and that TD Bank be awarded, at its election:
 - (i) its actual damages and profits attributed to Hill's infringement pursuant to 17 U.S.C.

§ 504(b), or (ii) statutory damages pursuant to 17 U.S.C. § 504(c), which shall be enhanced due to the willful and intentional nature of Hill's misconduct;

E. That TD Bank be awarded its full costs and reasonable attorney's fees for this action pursuant to 17 U.S.C. § 505; and

F. That the Court award such other and further relief to TD Bank as the Court deems to be just and proper.

Respectfully submitted,

BROWN & CONNERY, LLP

Date: November 19, 2012

s/ William M. Tambussi

William M. Tambussi, Esquire
Susan M. Leming, Esquire
360 Haddon Avenue
Post Office Box 539
Westmont, NJ 08108
Phone: (856) 854-8900
Fax: (856) 858-4967
wtambussi@brownconnery.com
sleming@brownconnery.com

**SIMPSON THACHER &
BARTLETT LLP**

Lori E. Lesser, Esquire
Jodie Sopher Pimentel, Esquire
425 Lexington Avenue
New York, NY 10017
(212) 455-2000

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

I, William M. Tambussi, hereby certify as follows:

This matter is related to the pending matter Hill, et al. v. DiFlorio, et al., Doc. No. 09-cv-3685-RBK-JS. This matter is not the subject of any other actions pending in any court or of any pending arbitration proceeding and no other action or arbitration proceeding is contemplated. I certify that the foregoing pleading has been served and filed pursuant to the applicable Federal Rules of Civil Procedure.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 19, 2012

s/ William M. Tambussi

William M. Tambussi